U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 15-0103 BLA

ARNEL C. McGLOTHLIN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
BEATRICE POCAHONTAS COMPANY/ISLAND CREEK COAL COMPANY	)	
	)	DATE ISSUED: 11/19/2015
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for claimant.

Christopher M. Green (Jackson Kelly PLLC), Charleston, West Virginia, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order (2011-BLA-5176) of Administrative Law Judge Richard T. Stansell-Gamm awarding benefits on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a subsequent claim filed on March 30, 2010.[1]

Applying Section 411(c)(4), 30 U.S.C. §921(c)(4),[2] the administrative law judge credited claimant with thirty-six years of coal mine employment,[3] of which thirty-four years were underground, and found that the evidence established that claimant has a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge, therefore, found that claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, and established

[1] The record reflects that claimant's prior claim, filed on July 10, 1985, was finally denied, but the district director could not locate the claim file. Decision and Order at 3; Director's Exhibit 1. Before the administrative law judge, employer moved to be dismissed as the responsible operator, arguing that the absence of the record from the prior claim was prejudicial to employer, as the basis of the prior denial could not be determined. Decision and Order at 3; Hearing Tr. at 7-11. The administrative law judge denied employer's motion, and informed the parties that he would consider the prior claim to have been denied for failure to establish any of the elements of entitlement. Decision and Order at 3-4, 6; Hearing Tr. at 11. As employer does not challenge this determination on appeal, it is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[2] As part of the Patient Protection and Affordable Care Act, Public Law No. 111-148, Congress enacted amendments to the Black Lung Benefits Act (the Act), which apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this case, Congress reinstated Section 411(c)(4) of the Act, which provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where the miner worked at least fifteen years in underground coal mine employment, or in surface mine employment in conditions substantially similar to those in an underground mine, and where a totally disabling respiratory impairment is established. 30 U.S.C. §921(c)(4). The Department of Labor revised the regulations to implement the amendments to the Act. The revised regulations became effective on October 25, 2013, and are codified at 20 C.F.R. Parts 718, 725.

[3] The record reflects that claimant's coal mine employment was in Virginia. Director's Exhibits 3, 6. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

that one of the applicable conditions of entitlement had changed since the date upon which the denial of his prior claim became final. *See* 20 C.F.R. §725.309(c). Finally, the administrative law judge found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding that employer failed to rebut the Section 411(c)(4) presumption. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[4]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Because claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to employer to rebut the presumption by establishing that claimant does not have either legal or clinical pneumoconiosis,[5] 20 C.F.R. §718.305(d)(1)(i), or by establishing that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii). The administrative law judge found that employer failed to establish rebuttal by either method.

In evaluating whether employer established that claimant does not have legal pneumoconiosis, the administrative law judge considered the medical opinions of Drs.

[4] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c). *See Skrack*, 6 BLR at 1-711.

[5] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

Fino and Castle.[6] Dr. Fino opined that claimant does not suffer from legal pneumoconiosis, but suffers from a disabling gas exchange impairment attributable to atelectatic[7] changes in the lungs, and possibly to a lung mass or a cardiac condition. Employer's Exhibits 6 at 8; 8 at 17. Dr. Castle similarly opined that any blood gas exchange impairment is likely due to atelectatic scar tissue in the lung and cardiac disease, and is unrelated to coal mine dust exposure. Employer's Exhibits 3 at 7-8; 11 at 32, 34-36. The administrative law judge discredited the opinions of Drs. Fino and Castle because he found that neither was well-reasoned. Decision and Order at 21-22, 33-34. The administrative law judge, therefore, found that employer failed to disprove the existence of legal pneumoconiosis. Decision and Order at 34.

Employer argues that the administrative law judge failed to provide valid reasons for discrediting the opinions of Drs. Fino and Castle. Employer's Brief at 6-18. Specifically, employer contends that the administrative law judge selectively analyzed the medical evidence relevant to claimant's cardiac disease, by focusing only on the portions of the treatment records that are inconsistent with Dr. Fino's and Dr. Castle's opinions, to the exclusion of the other medical evidence. Employer's Brief at 15. Employer asserts that the administrative law judge's failure to consider all of the evidence relevant to claimant's cardiac condition constitutes reversible error. Employer's Brief at 15-18.

Employer's contention lacks merit. In considering the opinions of Drs. Fino and Castle, eliminating coal mine dust exposure as a cause of claimant's gas exchange impairment because claimant's impairment was more likely due, in part, to his history of cardiac disease, the administrative law judge acknowledged that claimant's treatment records document several cardiac conditions, including hypertension, non-specific cardiac arrhythmia, congestive heart failure, and cardiomyopathy. Decision and Order at 12-16. The administrative law judge further correctly noted, however, that the record also contains echocardiogram results dating from 2000 to 2012 that characterize

[6] The administrative law judge also considered the opinion of Dr. Forehand, who diagnosed claimant with coal workers' pneumoconiosis, based on claimant's thirty-seven years of underground coal mine employment, his chest x-ray and arterial blood gas study results, his shortness of breath, and the lack of any evidence of smoking-related lung disease. Decision and Order at 16; 32-33; Director's Exhibit 12.

[7] "Atelectasis" is defined as "an incomplete expansion of a lung or a portion of a lung" or "airlessness or collapse of a lung that had once been expanded." Dorland's Illustrated Medical Dictionary 171 (32d ed. 2012).

claimant's heart function as "normal," and note only "trivial," "minimal," or "mild" cardiac abnormalities. Decision and Order at 12-13; Employer's Exhibit 5.

Evaluating Dr. Fino's opinion, the administrative law judge noted that, in opining that claimant's gas exchange impairment might be cardiac in nature, Dr. Fino acknowledged that claimant did not exhibit any symptoms of acute cardiac failure during his own physical examination and testing, but asserted that the lack of cardiac symptoms on examination did not rule out the possibility of chronic congestive heart failure or valvular disease. Decision and Order at 22, 33-34; Employer's Exhibit at 20. The administrative law judge permissibly discounted Dr. Fino's opinion because, in attributing claimant's disabling gas exchange impairment in part to the cardiac condition reflected in claimant's medical treatment notes, Dr. Fino did not explain his conclusion in light of those treatment records that characterize claimant's cardiac abnormalities as only "trivial" or "minimal." *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528, 21 BLR 2-323, 2-326 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-28 (4th Cir. 1997); Decision and Order at 33-34; Employer's Exhibit 5. Thus, the administrative law judge concluded, as was within his discretion, that Dr. Fino did not adequately explain why claimant's disabling blood gas exchange abnormality, demonstrated by Dr. Fino's 2012 blood gas study, was due in part to his cardiac condition, but was not due to coal mine dust exposure. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558, 25 BLR 2-339, 2-353 (4th Cir. 2013); *Hicks*, 138 F.3d at 528, 21 BLR at 2-326; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Underwood*, 105 F.3d at 949, 21 BLR at 2-28; Decision and Order at 33. We therefore affirm, as supported by substantial evidence, the administrative law judge's finding that Dr. Fino's opinion did not establish that claimant does not have legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); *see Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208, 22 BLR 2-162, 2-168 (4th Cir. 2000).

Evaluating Dr. Castle's opinion, the administrative law judge noted that Dr. Castle similarly opined that claimant's cardiac condition was a likely cause of his gas exchange impairment, based on the medical records he reviewed. Decision and Order at 21, 33; Hearing Tr. at 15; Employer's Exhibit 5. The administrative law judge also considered Dr. Castle's statement that the lack of signs of overt heart failure during his examination did not mean that claimant does not have "compensated" congestive heart failure. Decision and Order at 18; Employer's Exhibit 11 at 26. However, contrary to employer's argument, the administrative law judge permissibly found that Dr. Castle did not adequately explain his conclusions in light of those treatment records documenting only "trivial" or "minimal" heart abnormalities. *See Owens*, 724 F.3d at 556-59, 25 BLR at 2-350-54; *Hicks*, 138 F.3d at 528, 21 BLR at 2-326; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Underwood*, 105 F.3d at 949, 21 BLR at 2-28; Decision and Order at 21, 33;

Employer's Brief at 15-18; Employer's Exhibit 5. Thus, the administrative law judge permissibly concluded that Dr. Castle's elimination of coal mine dust exposure as a cause of claimant's blood gas impairment, on the basis of claimant's cardiac condition, was inadequately reasoned. *See Hicks*, 138 F.3d at 528, 21 BLR at 2-326; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Underwood*, 105 F.3d at 949, 21 BLR at 2-28; Decision and Order at 21, 33. Consequently, we affirm, as supported by substantial evidence, the administrative law judge's determination that Dr. Castle's opinion did not establish that claimant does not have legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); *see Compton*, 211 F.3d at 207-208, 22 BLR at 2-168.

Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Fino and Castle, we affirm the administrative law judge's finding that employer failed to disprove legal pneumoconiosis.[8] Employer's failure to disprove the existence of legal pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i). Therefore, we affirm the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption by disproving the existence of pneumoconiosis.

The administrative law judge next addressed whether employer could establish rebuttal by showing that no part of claimant's respiratory or pulmonary disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). The administrative law judge rationally found that the same reasons he provided for discrediting the opinions of Drs. Fino and Castle that claimant does not suffer from legal pneumoconiosis also undercut their opinions that claimant's disabling respiratory impairment was not caused by pneumoconiosis. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05, BLR (4th Cir. 2015); Decision and Order at 34. Thus, we affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption by establishing that no part of claimant's total disability was caused by pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(ii).

Claimant invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis, and employer did not rebut the presumption. Therefore, we affirm the award of benefits. 30 U.S.C. §921(c)(4).

[8] Because the administrative law judge provided valid bases for according less weight to the opinions of Drs. Fino and Castle, we need not address employer's remaining arguments regarding the weight he accorded their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge